IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE.

WRIT PETITION NO. 83 OF 2004.

Krishnan Kumar Bhatia. ..Petitioner.
vs.
The Union of India & ors. ..Respondents.

Shri A.M. Jaykar i/b M/s Khaitan and Jaykar for the petitioner.

Shri P.S. Jetly with Y.R. Mishra for the respondents.

CORAM: V.C.DAGA &
J.P.DEVADHAR,JJ.
DATED: 31-3-2005.

P.C.

1. Heard rival parties.

2. Perused petition and counter-affidavit.

3. The petitioner in this petition seeks directions against respondent No.2 to pay interest on the amount paid by the petitioner by way of penalty and fine, which was subsequently refunded to the petitioner, pursuant to the order of the CEGAT dated 20.6.2001.

4. At the outset, Shri Jetly, learned Counsel for the respondents raised a preliminary objection to the maintainability of the petition under Article 226 of the Constitution of India, relying upon a decision of

the Constitution Bench of the Apex Court in the case of **Suganmal vs.State of M.P. reported in AIR 1965 SC 1740**, wherein the Apex Court has held that writ petition under Article 226 of the Constitution solely praying for issue of writ of mandamus, directing the State to refund money alleged to have been illegally collected by the State is not ordinarily maintainable. He also placed reliance on one another judgment of the Apex Court in the case o**f Union of India vs. Oriental Enterprises** r**eported in 1998(99) ELT 193** to support his submission.

5. In reply, Shri Mohan Jaykar,learned Counsel appearing for the petitioner submitted that the Division Bench of this Court in the case of **Shri Balaji Automobiles vs. Union of India reported in 2002 (140) ELT 367 (Bom.)**, has ruled that till insertion of section 27A in the Customs Act by Act No. 22 of 1995 there was no right under the Act to claim payment of interest on the delayed refund. However, in view of insertion of section 27A which provides for payment of interest on delayed payment, a statutory obligation created by the Act can be enforced through a writ of mandamus. The submission made by Shri Jaykar needs acceptance considering the law laid down by the Apex Court in the case of Oriental Enterprises followed by this Court in Shri Balaji Automobiles (cited supra). Thus, the preliminary objection raised

by Shri Jetly stands overruled being misplaced.

6. Now, turning to the factual scenario of the case at hand, it is not in dispute that pursuant to the order of the CEGAT dated 20th June, 2001 passed in appeal filed by the petitioner whereby order of respondent No.4 dated 27.8.1996 was set aside and the petitioner was paid refund order on 10.4.2002 pursuant to the order of CEGAT. As a matter of fact, it was expected on the part of the respondents immediately to issue refund order, followed by payment thereof. Had this been done, claim for payment of interest could have been said to be unjustified. But, in this case, claim set up by the petitioner for interest cannot be said to be wholly frivolous and/or unjustified. However, it is no doubt true that in order to claim interest petitioner vide letters dated 18.5.2005, 26.6.2002, 24.8.2004 and 19.4.2003, followed by legal notice to the 2nd respondent through its Advocate dated 10.8.2002 and 20.11.2002 has called upon 3rd respondent to pay to the petitioner interest on the amount refunded to him. The 2nd respondent vide its letter dated 21.8.2003, turned down the claim of the petitioner but at the same time called upon the petitioner for personal hearing. However, the said letter appears to have been received by the petitioner on the date on which hearing was fixed. Consequently, petitioner could not appear and attended hearing. In

the result, the claim set up by the petitioner did not yield any fruits.

7. During the course of hearing Shri Jetly, learned Counsel appearing for the Revenue submitted that the petitioner can be asked to appear before the 2nd respondent and the 2nd respondent can be directed to consider the claim of the petitioner for grant of interest on its own merits, considering the fact that section 27A has now been inserted in the Customs Act.

8. The learned Counsel for the petitioner while reacting the said submission, expressed his reservation to go before the 2nd respondent, in view of the fact that the said respondent has already taken a view that the petitioner is not entitled to claim interest.

9. At this juncture, Shri Jetly assured this Court that the 2nd respondent will consider the claim of the petitioner for interest, ignoring its refusal for the reasons stated in the impugned letter, and shall consider the claim of the petitioner judicially on its own merits.

10. In view of the submissions made by Shri Jetly, we set aside the impugned letter dated 21.8.2003 and direct the 2nd respondent to hear the petitioner and

decide the claim for interest in the light of the judgment of this Court in the case of Balaji Automobile case (cited supra) and that of the Apex Court in the case of L.I.C. vs. Gangadhar Ranade reported in AIR 1990 SC 185, referred to therein.

11. Petition accordingly stands disposed of in terms of this order, with a direction contained hereinabove. The 2nd respondent shall hear and dispose of the claim of the petitioner for interest on refund, as expeditiously as possible at any rate within a period of three months from today. Shri Jetly undertakes to communicate this order to the 2nd respondent. At the same time, petitioner is also permitted to communicate this order to the 2nd respondent. Petition stands disposed of in terms of this order with no order as to costs.

(J.P.DEVADHAR,J.) (V.C.DAGA,J.)

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